IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1732 OF 2003
IN
INCOME TAX APPEAL (L) NO.599 OF 2003

The Commissioner of Income Tax
Mumbai City-IV, Mumbai .. Appellant
V/s
Shri.Manoj M.Shah .. Respondent

Mr.P.S.Sahadevan for the Appellant.
Mr.A.K.Jasani for the Respondent.

CORAM : DR.S.RADHAKRISHNAN &
V.C.DAGA, JJ.

DATE : 20th March, 2007.

P.C.:

1. Heard the learned Counsel for the parties. On 12.2.2004 this matter was adjourned by a period of two weeks to enable the Appellant to file better affidavit to justify the contention of condonation of delay. No affidavit was filed and thereafter on 26.2.2004 the matter was adjourned for a further period of three weeks to file a better affidavit. The matter thereafter came on board after three years. On 26.2.2007 when the matter was on board nobody appeard on behalf of the Appellant and hence the matter came to be adjourned to 6.3.2007. On 6.3.2007 Mr.Sahadevan, the learned Advocate appeared for the Appellant and sought two weeks time, and on that day we had adjourned this matter by a period of two weeks to enable the Appellant to file a better affidavit in support of the Notice of Motion. Till date however no better affidavit justifying condonation of delay is filed on behalf of the Appellant

in support of the Notice of Motion.

2. Mr.Sahadevan, the learned Counsel for the Appellant categorically states that he had orally informed the Commissioner of Income Tax of the aforesaid order. Inspite of the same, there is no better affidavit filed on behalf of the Appellant. This is not the only matter in which this has happened. In several matters the Revenue appears to be totally callous and that they are not filing proper affidavits at all with regard to the contention of condonation of delay. The affidavits which are filed merely state that there was major restructuring and as such the records were not available. The learned Counsel for the Appellant however states that the restructuring took place in the year 2001 and the above Appeal was filed in June, 2003, i.e.almost two years after the restructuring.

3. Though we have granted a number of adjournments to file a better affidavit, there is no such better afffidvit justifying the delay of 314 days in filing the Appeal. By this process the Revenue suffers and if that be so, all the members of the public also suffer since the tax is contributed by the members of the public. The person responsible for this will bave to be made answerable and accountable.

4. Under these circumstnces, the Notice of Motion is dismissed with costs quantified at Rs.10,000/-. The

costs shall be paid by the Appellant to the Respondent within a period of two weeks from today. Costs shall be recovered from the concerned Commissioner of Income Tax and the affidavit indicating as to how the costs is recovered shall also be filed in this Court within a period of two weeks from today.

5. Registry is directed to send the copy of this order to the Central Board of Direct Taxes for appropriate action.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN,J.)**